

IN THE CIRCUIT AND SUPERIOR COURTS OF  
BOONE COUNTY, INDIANA

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NOTICE OF PROPOSED AMENDMENTS TO LOCAL COURT RULES, FINDING OF  
GOOD CAUSE TO DEVIATE FROM THE SCHEDULE, AND REQUEST FOR  
SUPREME COURT APPROVAL

November 25, 2008

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The Judges of the Boone Circuit Court and the Boone Superior Courts I and II pursuant to Trial Rule 81(B) give notice of proposed amendments to the current local court rules find good cause to deviate from the schedule for amending local rules under Trial Rule 81(D). All new text is shown by underlining and deleted text is shown by ~~strikethrough~~. The Judges request Supreme Court approval for the amendments to the non-discretionary filing of criminal cases under LR06-CR00-BLR-13. The amendments are scheduled to take effect on January 1, 2009. Notice of this proposed rule change has been provided to the County Clerk and Officers of the Boone County Bar Association.

Comment may be made until December 24, 2008 to Judge Matthew Kincaid at [jkincaid@co.boone.in.us](mailto:jkincaid@co.boone.in.us).

## LR06-CR00-BLR-13

### NON-DISCRETIONARY FILING OF CRIMINAL CASES

Effective July 1<sup>st</sup>, 1995, all criminal cases, when filed, shall be assigned by the Clerk to the Circuit, Superior I or Superior II Courts of the Judicial Circuit using the following procedure:

- ~~A. All cases, in which one or more counts are charged under Title IX of the Indiana Code, whether as felonies or misdemeanors, shall be assigned to Superior Court II.~~
- ~~B. All cases charged as misdemeanors exclusively under Indiana Code 35-48-4, 35-42-2-1, 35-43-5 or 7.1 shall be assigned to Superior Court II. All other cases charged as misdemeanors shall be assigned to Circuit Court. In those circumstances where the nature of the charges would result in a conflict in the assignment of such cases between Superior Court II and Circuit Court, such cases shall be assigned to Superior Court II and Circuit Court on an alternating basis, beginning with Circuit Court.~~
- ~~C. All cases in which one or more counts are charged under Indiana Code 35-36-1-3 (4) or (5) shall be assigned to Circuit court.~~
- ~~D. Recognizing that the Circuit Court exercises exclusive jurisdiction in the area of juvenile matters, all felony cases, except as set forth in Letters A and C above shall be rotated between the Circuit, Superior I and Superior II Courts by assigning thirty percent (30%) of such felony cases to Circuit, fifty percent (50%) to Superior I, and twenty percent (20%) to Superior II.~~
- ~~E. Subject to the exceptions set forth in A and C above, in the event a case charges both felony and misdemeanor offenses, the case shall be considered a felony and assigned pursuant to D above.~~
- ~~F. The rotation of cases under paragraph D hereinabove shall be accomplished by using one set of one hundred balls. The set for felony cases under paragraph D shall contain 50 balls designated for Superior I, 30 balls designated for Circuit Court, and 20 balls designated for Superior Court II. The balls (those to be selected from and those selected) shall be maintained by the Clerk of the Court and placed in a secure location. Each time a felony case is referred to in paragraph D is filed, the Clerk shall draw a ball and assign the case to the Court so designated. The ball drawn shall be held by the Clerk with the other balls that have been drawn until all balls have been drawn and the process begun again. Whenever a ball is drawn, the Clerk shall note such on a log sheet kept by the Clerk and a Selection Sheet will be placed in each file that identifies who did the particular draw, the number of the ball if applicable, and how it was done.~~

- ~~G. If, after assignment, a case is dismissed and later refiled, it shall be assigned to the Court of original assignment. The purpose of this rule is to comply with Indiana Criminal Rule 2.2 so as to provide a procedure for non-discretionary assignment of criminal cases.~~
- ~~H. In cases assigned pursuant to D above, where a charge or charges are filed against more than one Defendant and such charge or charges arise out of the same factual allegations or same criminal episode, such cases shall be assigned to the same Court in which the first such case was assigned pursuant to D above. In such event, the subsequent case or cases shall be assigned to the same Court as the first one was and another ball shall be removed from the draw as necessary to simulate that all such cases were drawn by the specific Court to whom they are being assigned.~~
- ~~I. Notwithstanding Item D above, whenever the Defendant is charged in a cause wherein the basis for the charge or charges has resulted/ or results in the filing of a CHINS proceeding in Circuit Court, then such cause shall be transferred to the Circuit Court, upon request by the Prosecutor, the Department of Child Services, or the Court, on its own motion.~~
- ~~J. Notwithstanding any of the foregoing, the Judges of Boone County may agree to transfer any criminal case between or among themselves upon good cause shown by the prosecutor or counsel for the Defendant, or upon their own motion, when in the interests of judicial economy or the interests of justice so require.~~
- ~~K. In order to comply with Criminal Rule 13 (c), a list of alternative judges shall be maintained in the offices of the Circuit, Superior I and Superior II Courts. On this list shall be contained the names of the regular sitting Judges in the counties contiguous to Boone County. Whenever the appointment of an alternative sitting Judge is ordered by any of the regular sitting judges of the court where the Judge sits, the Judge shall assign the case to one of the Judges on this list on a rotating basis.~~
- ~~L. This rule shall not, under any circumstances, limit or otherwise alter the option of the regular sitting Judge to request the Indiana Supreme Court appoint a Special Judge in accordance with the Criminal Rule 13(d).~~

## **NON-DISCRETIONARY FILING OF CRIMINAL CASES**

Effective January 1, 2009, all criminal cases, when filed, shall be assigned by the Clerk to the Circuit, Superior I or Superior II Courts of the Judicial Circuit as follows:

### Misdemeanors (cases in which only misdemeanors are charged)

- A. Cases in which the only misdemeanor charged is Operator Never Licensed, I.C. 9-24-18-1 shall be assigned to Circuit Court.
- B. Cases in which the only misdemeanor charged is Driving While Suspended, I.C. 9-24-19-2 or 9-24-19-3, shall be assigned to Superior Court I.
- C. All other I.C. 9 *et. seq.* (Title IX traffic) misdemeanor cases shall be assigned to Superior Court II.
- D. All cases charging misdemeanors under I.C. 35-48-4, 35-42-2-1, 35-43-5 and Title VII crimes, alone or in conjunction with other misdemeanor offenses, shall be assigned to Superior Court II.
- E. All other misdemeanor cases, not covered by A-D, shall be assigned to Circuit Court.

### Felonies:

- F. All cases in which one for more felony counts are charged under I.C. 35-36-1-3, 35-36-1-4 or 35-36-1-5 (incest, neglect of a dependent and criminal nonsupport of a child) shall be assigned to Circuit Court.
- G. All cases in which the only felony count charged is Driving While Suspended under I.C. 9-24-2-4 shall be assigned to Superior Court I.
- H. All felony cases, not covered by paragraph F or G, in which the only felony charged is a charge under I.C. 9 *et. seq.* (a Title IX Traffic offense) shall be assigned to Superior Court II.
- I. All felony and misdemeanor operating while intoxicated cases shall be assigned to Superior Court II, no matter what other felony charges may be filed therewith.
- J. All felony cases not assigned, pursuant to paragraphs F through I, shall be assigned 50% to Superior Court I, 30% to Circuit Court and 20% to Superior Court II by random draw as provided in paragraph L below.
- K. If a case charges both a non-traffic code felony and a misdemeanor, other than an alcohol related misdemeanor, the case shall be considered a felony and assigned pursuant to paragraph J above.
- L. The rotation of cases under Paragraph J shall be accomplished by using a set of one hundred balls. The set of balls shall contain 50 balls marked Superior Court I, 30 balls marked Circuit Court, and 20 balls marked Superior Court II. The balls (those selected and those yet to be selected) shall be securely maintained by the Clerk of the Court. Each time a felony case is assigned, pursuant to paragraph J, the Clerk shall draw a ball and assign the case the Court designated on that ball. The ball drawn shall be held by the Clerk with the other balls that have been drawn until all one hundred balls have been drawn. At that point, all one hundred balls shall be returned to the receptacle from which they are drawn and the

- process shall begin anew. The Clerk shall maintain a log of the balls drawn and the case assignments made. A “selection sheet” shall be placed in each file assigned, pursuant to paragraph J, noting the person who made the draw and the Court to which the case was assigned.
- M. If, after assignment, a case is dismissed and later re-filed, it shall be assigned to the Court of original assignment. The purpose of this rule is to comply with Indiana Criminal Rule 2.2., so as to provide a procedure for non-discretionary assignment of criminal cases.
- N. In cases assigned, pursuant to paragraph J above, where a charge or charges are filed against one or more than one defendant and such charge or charges arise out of the same factual allegations or same criminal episode, such cases shall be assigned, upon the request of the prosecutor, to the same Court in which the first such case was assigned, pursuant to paragraph J. In such event, the subsequent case or cases shall be assigned to the same court as the first one and another ball shall be removed from the draw for the court to which the subsequent case was assigned.
- O. Notwithstanding Item J above, whenever the Defendant is charged in a cause wherein the basis for the charge or charges has resulted/ or results in the filing of a CHINS proceeding in Circuit Court, then such cause shall be transferred to the Circuit Court, upon request by the Prosecutor, the Department of Child Services, or the Court, on its own motion.
- P. Notwithstanding any of the foregoing, the Judges of Boone County may agree to transfer any criminal case between or among themselves upon good cause shown by the prosecutor or counsel for the Defendant, or upon their own motion, when in the interests of judicial economy or the interests of justice so require.
- Q. In order to comply with Criminal Rule 13 (c), a list of alternative judges shall be maintained in the offices of the Circuit, Superior I and Superior II Courts. On this list shall be contained the names of the regular sitting Judges in the counties contiguous to Boone County. Whenever the appointment of an alternative sitting Judge is ordered by any of the regular sitting judges of the court where the Judge sits, the Judge shall assign the case to one of the Judges on this list on a rotating basis.
- R. This rule shall not, under any circumstances, limit or otherwise alter the option of the regular sitting Judge to request the Indiana Supreme Court appoint a Special Judge in accordance with the Criminal Rule 13(d).

## LR06-CR00-BLR-15

### CRIMINAL BAIL

~~A. In all criminal cases coming within the jurisdiction of the Court and preliminary felony charges filed in the Court, the bail is now fixed as of the first day of each yearly term and each succeeding term hereafter as follows, and these amounts will be the only amounts set for bail for charges to be filed in the Circuit, Superior I and Superior II Courts of Boone County, unless otherwise ordered by the Courts:~~

<u>OFFENSE/CLASS</u>	<u>SURETY BOND</u>	<u>CASH BOND</u>
MURDER	NONE	NONE
METHAMPHETAMINE	\$50,000.00	\$50,000.00
(All Meth Related Charges)		
CLASS A FELONY	\$50,000.00	\$50,000.00
CLASS B FELONY	\$25,000.00	\$25,000.00
CLASS C FELONY	\$10,000.00	\$10,000.00

#### INDIANA RESIDENTS:

CLASS D FELONY	\$5,000.00	\$500.00
CLASS A MISDEMEANOR	\$5,000.00	\$500.00
CLASS B MISDEMEANOR	\$4,000.00	\$400.00
CLASS C MISDEMEANOR	\$2,500.00	\$250.00

#### OUT OF STATE RESIDENTS:

CLASS D FELONY	\$15,000.00	\$7,500.00
CLASS A MISDEMEANOR	\$5,000.00	\$2,500.00
CLASS B MISDEMEANOR	\$3,000.00	\$1,000.00
CLASS C MISDEMEANOR	\$2,000.00	\$1,000.00

**NO BOND:** Any person arrested on a charge of **Resisting Law Enforcement, Intimidation, Invasion of Privacy, Class A Misdemeanor or higher Battery, Strangulation, or Stalking** shall be detained in custody without bond until initial hearing. At initial hearing, bond shall be set pursuant to the bond schedule above absent a request from the Prosecuting Attorney for an alternative bond.

If a person has multiple charges, bond shall be posted on the most serious charge only. If the listed bond amount is inappropriate under the circumstances, the Prosecuting Attorney shall bring such circumstances to the attention of the court by written or oral motion.

~~———— This bond schedule shall not be applicable in the case of a person who has been arrested for a crime while on probation, parole, bond or released on own recognizance for another offense. In such cases, the person may be detained for a maximum period of fifteen (15) calendar days, during which period the Prosecuting Attorney shall notify the appropriate parole or probation authority, and the Court shall determine the proper amount of bond, if any.~~

~~B. Upon issuance of a criminal bench warrant, the amount of bail specified shall be endorsed upon the warrant. The Court may increase or diminish the amount specified or permit the posting of cash bond in lieu of accepting any property or surety bond in any justifiable cause.~~

~~C. The Clerk may assess a ten percent (10%) administrative fee per statute on all cash bonds.~~

~~D. APPLICABLE TO SUPERIOR II ONLY: The schedule of fines and penalties established by Superior II for infraction matters as adopted in September 1, 1981, and as amended April 10, 1984, and as may be subsequently amended by Superior II are now incorporated herein and made a part of this Order.~~

~~**CASH BONDS:** All cash bonds shall be posted with the Boone County Clerk or the Boone County Sheriff. Cash bonds may be used to pay fines, court costs, and other financial obligations of the defendant in any Boone County Cause. In addition, the bond may be used to reimburse the county for the cost of court appointed counsel. Unless the Court orders otherwise, when cash bonds are released, they may be released to the person who posted the bond, not necessarily to the Defendant.~~

~~**BOND REDUCTIONS:** Pre-trial Motions for bond reductions shall be presented to the Court in writing and proper notice of the hearing scheduled thereon shall be given to the Prosecuting Attorney. Notwithstanding any pre-trial motion for bond reduction, at the Initial Hearing a Defendant's bond may be reduced at the discretion of the Judge, with or without the presence of the State of Indiana.~~

~~**SUPERSEDES:** This Bail Bond Schedule supersedes all previous Bail Bond Schedules ordered by the Circuit and Superior Courts of this County.~~

## CRIMINAL BAIL

- A. In all criminal cases coming within the jurisdiction of the Court and preliminary felony charges filed in the Court, the bail is now fixed as of the first day of each yearly term and each succeeding term hereafter as follows, and these amounts will be the only amounts set for bail for charges to be filed in the Circuit, Superior I and Superior II Courts of Boone County, unless otherwise ordered by the Courts:

OFFENSE/CLASS	SURETY BOND	CASH BOND
MURDER	NONE	NONE
METHAMPHETAMINE	\$50,000.00	\$50,000.00
<u>(All Meth Related Charges)</u>		
CLASS A FELONY	\$50,000.00	\$50,000.00
CLASS B FELONY	\$25,000.00	\$25,000.00
CLASS C FELONY	\$10,000.00	\$10,000.00

### INDIANA RESIDENTS:

CLASS D FELONY	\$5,000.00	\$500.00
CLASS A MISDEMEANOR	\$5,000.00	\$500.00
CLASS B MISDEMEANOR	\$4,000.00	\$400.00
CLASS C MISDEMEANOR	\$2,500.00	\$250.00

### OUT OF STATE RESIDENTS:

CLASS D FELONY	\$15,000.00	\$7,500.00
CLASS A MISDEMEANOR	\$5,000.00	\$2,500.00
CLASS B MISDEMEANOR	\$3,000.00	\$1,000.00
CLASS C MISDEMEANOR	\$2,000.00	\$1,000.00

- B. NO BOND:** Any person arrested on a charge of **Resisting Law Enforcement, Intimidation, Invasion of Privacy, Class A Misdemeanor or higher Battery (including Sexual Battery and Domestic Battery), Strangulation, or Stalking** shall be detained in custody without bond until initial hearing. Also, as further set forth herein, there is no bond for **Child Molesting or Child Solicitation**. At initial hearing, bond shall be set pursuant to the bond schedule above absent a request from the Prosecuting Attorney for an alternative bond.

- C. NO BOND FOR CERTAIN SEX OFFENDERS WITHOUT A HEARING**  
Pursuant to I.C. 35-33-8-3.5 any person arrested on any charge

1. (a) who is already an I.C. 35-38-1-7.5 sexually violent predator  
and



- (b) who is arrested for or charged with one or more of the following:
- i. Rape
  - ii. Criminal deviate conduct
  - iii. (omitted intentionally)
  - iv. Child exploitation
  - v. Vicarious sexual gratification
  - vi. (omitted intentionally)
  - vii. Child seduction
  - viii. Sexual misconduct with a minor as a class A, B or C felony
  - ix. Incest
  - x. (omitted intentionally)
  - xi. Kidnapping where the alleged victim is less than 18 years of age
  - xii. Criminal confinement where the alleged victim is less than 18 years of age
  - xiii. Possession of child pornography
  - xiv. Promoting prostitution as a class B felony
  - xv. Promoting human trafficking where the alleged victim is less than 18 years of age
  - xvi. Sexual trafficking of a minor
  - xvii. Human trafficking if the victim is less than 18 years of age.
  - xviii. (omitted intentionally)
  - xix. Voluntary manslaughter;
  - xx. An attempt or conspiracy to commit any of the charges listed above in a-t and also (1) attempted child molesting, (2) conspiracy to commit child molesting, (3) attempted child solicitation, (4) conspiracy to commit child solicitation, (5) attempted sexual battery, (6) conspiracy to commit sexual battery, (7) attempted murder, or (8) conspiracy to commit murder;

or

2. who is charged with child molesting;

or

3. who is charged with child solicitation

shall be detained in custody without bond until initial hearing.

### **INSTRUCTIONS TO JAIL OFFICERS**

Thus in determining whether a person arrested for or charged with an offense listed in C.1(b)(i.-xx.) of this rule the sheriff's assigned jail officer shall review the public record for sexually violent predators and determine whether the person charged with an offense in (i.-xx.) has previously been found to be a sexually violent predator. If that person has been found to be a sexually violent predator, then they have no bond

until a bail hearing. If they have not been found to be a sexually violent predator then they have an initial bond pursuant to schedule listed above depending on the class of the offense charged. (For example, a person charged with class A felony voluntary manslaughter who has not been found to be a sexually violent predator would have a bond of \$25,000.00 cash or surety. Whereas a person charged with class A felony voluntary manslaughter who has previously been found to be a sexually violent predator would have no bond.

For further clarification, ANY person charged with murder, resisting law enforcement, intimidation, invasion of privacy, battery as a class A misdemeanor or higher, strangulation, stalking, sexual battery, child molesting, or child solicitation shall be detained in custody without bond until an initial hearing.

- D. If a person has multiple charges, bond shall be posted on the most serious charge only. If the listed bond amount is inappropriate under the circumstances, the Prosecuting Attorney shall bring such circumstances to the attention of the court by written or oral motion.
- E. This bond schedule shall not be applicable in the case of a person who has been arrested for a crime while on probation, parole, bond or released on own recognizance for another offense. In such cases, the person may be detained for a maximum period of fifteen (15) calendar days, during which period the Prosecuting Attorney shall notify the appropriate parole or probation authority, and the Court shall determine the proper amount of bond, if any.
- F. Upon issuance of a criminal bench warrant, the amount of bail specified shall be endorsed upon the warrant. The Court may increase or diminish the amount specified or permit the posting of cash bond in lieu of accepting any property or surety bond in any justifiable cause.
- G. The Clerk may assess a ten percent (10%) administrative fee per statute on all cash bonds.
- H. APPLICABLE TO SUPERIOR II ONLY: The schedule of fines and penalties established by Superior II for infraction matters as adopted in September 1, 1981, and as amended April 10, 1984, and as may be subsequently amended by Superior II are now incorporated herein and made a part of this Order.
- I. **CASH BONDS:** All cash bonds shall be posted with the Boone County Clerk or the Boone County Sheriff. Cash bonds may be used to pay fines, court costs, and other financial obligations of the defendant in any Boone County Cause. In addition, the bond may be used to reimburse the county for the cost of court appointed counsel. Unless the Court orders otherwise, when cash bonds are released, they may be released to the person who posted the bond, not necessarily to the Defendant.

**J. BOND REDUCTIONS:** Pre-trial Motions for bond reductions shall be presented to the Court in writing and proper notice of the hearing scheduled thereon shall be given to the Prosecuting Attorney. Notwithstanding any pre-trial motion for bond reduction, at the Initial Hearing a Defendant's bond may be reduced at the discretion of the Judge, with or without the presence of the State of Indiana.

**K. DOMESTIC VIOLENCE ARREST.** Any person arrested and held in custody for a crime of domestic violence (as described in IC 35-41-1-6.3) shall be kept in custody and not released for at least eight (8) hours from the time of the arrest. Such a person, regardless of when an initial hearing may be held and bond set, may not be released on bail until at least eight (8) hours from the time of the person's arrest. This rule is promulgated to comply with I.C. 35-33-1-6 and is in conformance therewith

**L DETENTION OF PERSON ARRESTED FOR ALCOHOL RELATED OFFENSE.** When a person is arrested and held in custody for an alcohol related offense, that person may be detained pending release notwithstanding the posting of bond by the jail pursuant to the following schedule.

[INCORPORATED HEREIN BY REFERENCE AS IF FULLY SET FORTH HEREIN THE TABLE ENTITLED HOURS AFTER INITIAL READING IS TAKEN FROM I.C. 35-33-1-6.]

Note: In order to find when a person will reach the legal blood or breath alcohol level, find the blood or breath alcohol level reading in the left hand column, go across and find where the blood or breath alcohol level reading is an alcohol concentration equivalent (as defined in IC 9-13-2-2.4) to below eight-hundredths (0.08) gram of alcohol per one hundred (100) milliliters of the person's blood or per two hundred ten (210) liters of the person's breath, then read up that column to find the minimum number of hours before the person can be released.

**M. SUPERSEDES:** This Bail Bond Schedule supersedes all previous Bail Bond Schedules ordered by the Circuit and Superior Courts of this County.

**LR06-CR00-BLR-16**

**SCHEDULE OF FEES FOR SUPERIOR COURT II  
ALCOHOL AND DRUG PROGRAM**

<del>Assessment</del>	<del>\$50.00</del>
<del>Basic Education</del>	<del>\$200.00*</del>
<del>Advanced Education</del>	<del>\$300.00*</del>
<del>Case Transfer</del>	<del>\$50.00</del>
<del>Intensive Correctional Treatment</del>	<del>\$400.00</del>

~~\*Typically includes assessment~~

**SCHEDULE OF FEES FOR SUPERIOR COURT II  
ALCOHOL AND DRUG PROGRAM**

<u>Assessment</u>	<u>\$50.00</u>
<u>Basic Education</u>	<u>\$250.00*</u>
<u>Advanced Education</u>	<u>\$300.00*</u>
<u>Case Transfer</u>	<u>\$50.00</u>
<u>Intensive Correctional Treatment</u>	<u>\$400.00</u>
<u>Case Management Fee</u>	<u>\$100.00**</u>

\*Typically includes assessment

\*\*Case Management Fee may be assessed in the following circumstances:

1. Participant voluntarily enrolled in treatment program prior to sentencing;
2. Participant violated probation and/or had probation extended; or
3. Participant transferred probation to Boone County but will not utilize other services of program.



